

REMARKS/ARGUMENTS

This amendment is submitted in response to the Office Action dated January 8, 2007. After entry of this amendment, claims 1-23 will remain pending in this application. Reconsideration and allowance are respectfully requested in view of the remarks made below.

1. The Prior Art Rejections

Claims 1-23 were rejected in the Office Action under 35 U.S.C. §102 (b) as being anticipated by Ochs (US 4,813,561) or German et al. (US 6,276,543).

A. The §102(b) Rejection Based on Ochs

The rejection based on U.S. Patent 4,813,561 to Ochs (“Ochs”) was rationalized in the Office Action as follows:

Ochs discloses, in figs. 3 and 4, a tamper evident closure, comprising: a body portion comprising a base and an internally threaded downwardly depending sidewall portion; and a tamper evident band 12 frangibly connected to said sidewall portion, said tamper evident band comprising: a main band portion, and a J-hook retention member 21 that includes a plurality of pleated retaining elements, and wherein each of said retaining elements has an upper portion including at least one inwardly directed pleat fold, said upper portion being constructed and arranged to engage retention structure of a container in order to prevent upward movement of said tamper evident band with respect to the container, and wherein at least one of the pleated retaining elements is further constructed and arranged to engage the container so as to resist rotation with respect to the container, whereby separation of said tamper evident band from said body portion is better assured when the closure is unscrewed from the container. The retaining members comprises a leading edge and a trailing edge (see fig 4); wherein the trailing edge has an abutment surface being parallel to a radius of the closure.

Applicant respectfully but strenuously traverses this rejection, for the reasons set forth below.

US 4,813,561 (“Ochs”) concerns a closure with a disk shaped metal cover with sealing portion at its outer edge. The closure comprises a tamper indicating band, which is for example

shown in Figures 3 and 4 of the document. The tamper indicating band comprises a J-hook retention member, which is molded integrally with the skirt in a downward position and subsequently bent upwardly. The band is molded with spaced ratchets with one or more ratchet teeth to cooperate with spaced ratchets on the container.

MPEP 2131 sets forth the applicable legal standard, as it is articulated by the USPTO, that is required to support an anticipation rejection under 35 U.S.C. §102(b):

TO ANTICIPATE A CLAIM, THE REFERENCE MUST TEACH EVERY ELEMENT OF THE CLAIM

"A claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference." *Verdegaal Bros. v. Union Oil Co. of California*, 814 F.2d 628, 631, 2 USPQ2d 1051, 1053 (Fed. Cir. 1987). >"When a claim covers several structures or compositions, either generically or as alternatives, the claim is deemed anticipated if any of the structures or compositions within the scope of the claim is known in the prior art." *Brown v. 3M*, 265 F.3d 1349, 1351, 60 USPQ2d 1375, 1376 (Fed. Cir. 2001) (claim to a system for setting a computer clock to an offset time to address the Year 2000 (Y2K) problem, applicable to records with year date data in "at least one of two-digit, three-digit, or four-digit" representations, was held anticipated by a system that offsets year dates in only two-digit formats). See also MPEP § 2131.02.< "The identical invention must be shown in as complete detail as is contained in the ... claim." *Richardson v. Suzuki Motor Co.*, 868 F.2d 1226, 1236, 9 USPQ2d 1913, 1920 (Fed. Cir. 1989). The elements must be arranged as required by the claim, but this is not an *ipsissimis verbis* test, i.e., identity of terminology is not required. *In re Bond*, 910 F.2d 831, 15 USPQ2d 1566 (Fed. Cir. 1990). Note that, in some circumstances, it is permissible to use multiple references in a 35 U.S.C. 102 rejection. See MPEP § 2131.01.

Ochs does not disclose or suggest in any way a J-hook retention member that includes a plurality of pleated retaining elements, as all of Applicant's independent claims positively set forth. According to "Merriam Webster" a pleat is a fold made by doubling material over on itself or something resembling such a fold.

The retaining elements shown in Ochs do not disclose or suggest in any way a folded material or anything remotely close to a folded material. The ratchet elements disclosed in Ochs are solid protrusions arranged on the tamper indicating band. The inner and the outer surface of the ratchets are completely different. There is no disclosure of a pleating of the retaining element as such.

Accordingly, Ochs does not disclose or suggest “each and every element” of Applicant’s claim as would legally be required to support a proper §102(b) anticipation rejection. The rejection is therefore improper and should be withdrawn.

Applicant notes that it would be improper to interpret the edge of the J-hook member as a “pleat” since, Applicant’s claims also set forth a J-hook retention member. It is well established that the same structure in a reference can not properly be interpreted to satisfy two different claim elements.

With regard to Applicant’s independent claim 21, it is especially noted that Ochs does not show a pleated retaining element having at least one outwardly directed fold and at least one inwardly directed fold as the claim requires.

B. The §102(b) Rejection Based on German et al.

The rejection based on U.S. Patent 6,276,543 to German et al. (“German”) was rationalized in the Office Action as follows:

German et al. disclose, in figs 4 and 5, a tamper evident closure, comprising: a body portion comprising a base and an internally threaded downwardly depending sidewall portion; and a tamper evident band 35 frangibly connected to said sidewall portion, said tamper evident band comprising: a main band portion, and a J-hook retention member 37 that includes a plurality of pleated retaining elements, and wherein each of said retaining elements has an upper portion including at least one inwardly directed pleat fold, said upper portion being constructed and arranged to engage retention structure of a container in order to prevent upward movement of said tamper evident band with respect to the container, and wherein at least one of the pleated retaining elements is further constructed and arranged to engage the container so as to resist rotation with respect to the container, whereby separation of said tamper evident band from said body portion is better assured when the closure is unscrewed from the container. The retaining members comprises a leading edge and a trailing edge (see fig 5 A&B); wherein the trailing edge has an abutment surface being parallel to a radius of the closure.

Applicant respectfully disagrees with this rejection.

German also concerns a composite closure with an insert cover disk. A tamper indicating band is formed as a downward extension of the closure skirt. Along its lower edge the band has a

band retainer that comprises a plurality of hinged angular spaced tabs or spring fingers (Figures 4 and 5A, column 6 lines 30+), which can be inverted from a down position to an up "use" position. Each finger presents one or more ratchets. The "fingers" disclosed in the reference are so stiff that if they were not separated by gaps they could not be inverted (column 6, lines 43-44), which would not hold for pleated elements.

German does not disclose a J-hook retention member that includes a plurality of pleated retaining elements. Again, according to "Merriam Webster" a pleat is a fold made by doubling material over on itself or something resembling such a fold. The retaining elements disclosed in German do not disclose or suggest a folded material or anything similar thereto. The ratchet elements disclosed by German are solid protrusions arranged on the tamper indicating band. The inner and the outer surface of the ratchets are completely different. There is no disclosure of a pleating of the retaining element as such.

Applicant notes that it would be improper to interpret the edge of the J-hook member as a "pleat" since, Applicant's claims also set forth a J-hook retention member. It is well established that the same structure in a reference can not properly be interpreted to satisfy two different claim elements.

With regard to Applicant's independent claim 21, it is especially noted that German does not show a pleated retaining element having at least one outwardly directed fold and at least one inwardly directed fold as the claim requires.

Accordingly, all of the pending claims are novel over the prior art of record. In addition, there is no suggestion or incentive present that would have led a person skilled in the art to modify any of the cited references in order to achieve what Applicant is claiming. Thus the pending claims are also not obvious over the prior art and should be allowable. A Notice of Allowance is respectfully solicited.

2. Conclusion

Applicant has made an earnest effort to place this application in condition for allowance. If the Examiner Ngo feels that a telephone interview would expedite prosecution of this patent application, she is respectfully invited to telephone the undersigned at 215-599-0600. Contact with the undersigned via electronic mail at jknoble@patentwise.com is hereby authorized¹ per MPEP 502.03.

Respectfully submitted,

/John L. Knoble/

John L. Knoble
Registration No. 32,387

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KNOBLE YOSHIDA & DUNLEAVY, LLC
Eight Penn Center- Suite 1350
1628 John F. Kennedy Boulevard
Philadelphia, PA 19103
(215) 599-0600 Main
(215) 599-0601 Fax
jknoble@patentwise.com

¹ Recognizing that Internet communications are not secure, I hereby authorize the USPTO to communicate with me concerning any subject matter of this application by electronic mail. I understand that a copy of these communications will be made of record in the application file.